

responsibilities would allow them regular contact with or control over Indian children, and employ only individuals who meet standards of character that are no less stringent than those prescribed for the Bureau of Indian Affairs.

**§ 63.14 What positions require a background investigation and determination of suitability for employment or retention?**

All positions that allow an applicant, employee, or volunteer regular contact with or control over Indian children are subject to a background investigation and determination of suitability for employment.

**§ 63.15 What questions should an employer ask?**

Employment applications must:

- (a) Ask whether the applicant, volunteer, or employee has been arrested or convicted of a crime involving a child, violence, sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution, or crimes against persons;
- (b) Ask the disposition of the arrest or charge;
- (c) Require that an applicant, volunteer or employee sign, under penalty of perjury, a statement verifying the truth of all information provided in the employment application; and
- (d) Inform the applicant, volunteer or employee that a criminal history record check is a condition of employment and require the applicant, volunteer or employee to consent, in writing, to a record check.

**§ 63.16 Who conducts the background investigation and prepares the determination of suitability for employment?**

- (a) The *Bureau of Indian Affairs* must use the United States Office of Personnel Management (OPM) to conduct background investigations for Federal employees. The BIA must designate qualified security personnel to adjudicate the results of background investigations.
- (b) *Indian tribes and tribal organizations* may conduct their own background investigations, contract with private firms, or request the OPM to conduct an investigation. The inves-

tigation should cover the past five years of the individual's employment, education, etc.

**§ 63.17 How does an employer determine suitability for employment and efficiency of service?**

(a) *Adjudication* is the process employers use to determine suitability for employment and efficiency of service. The adjudication process protects the interests of the employer and the rights of applicants and employees. Adjudication requires uniform evaluation to ensure fair and consistent judgment.

(b) Each case is judged on its own merits. All available information, both favorable and unfavorable, must be considered and assessed in terms of accuracy, completeness, relevance, seriousness, overall significance, and how similar cases have been handled in the past.

(c) An *adjudicating official* conducts the adjudication. Each Federal agency, Indian tribe, or tribal organization must appoint an adjudicating official, who must first have been the subject of a favorable background investigation.

(1) Indian tribes and tribal organizations must ensure that persons charged with the responsibility for adjudicating employee background investigations are well-qualified and trained.

(2) Indian tribes and tribal organizations should also ensure that individuals who are not trained to adjudicate these types of investigations are supervised by someone who is experienced and receive the training necessary to perform the task.

(d) Each adjudicating official must be thoroughly familiar with all laws, regulations, and criteria involved in making a determination for suitability.

(e) The adjudicating official must review the background investigation to determine the character, reputation, and trustworthiness of the individual. At a minimum, the adjudicating official must:

- (1) Review each security investigation form and employment application and compare the information provided;
- (2) Review the results of written record searches requested from local law enforcement agencies, former employers, former supervisors, employment references, and schools; and